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Parliamentary Joint Committee on Corporations and Financial Services  
Department of the Senate  
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Mr. Peter Brien  
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By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Sir

**RE: The Parliamentary Inquiry into Superannuation  
- ASIC must apply the law equally to all**

As a financial planner I have been particularly interested in the recent enforcement action taken by ASIC against one of Australia's largest financial planning groups. Putting to one side the lack of fairness adopted by the regulator in applying its interpretation of FSR, I am more concerned about the broader implications for the industry and the lack of any real sense of a level playing field, particularly in respect of industry funds.

**ASIC believes advice cannot be limited in scope**

In ASIC's recent enforceable undertaking against AMP Financial Planning, the following comments were made:

"3.2 ASIC considers that when an adviser is recommending the replacement of one product with another (whether expressly or implied), the obligation under section 945A(1) to determine, inquire and consider the personal circumstances of the client and to give advice which is appropriate to that client, requires, in part, that an adviser determine, inquire and consider the client's existing product. In ASIC's view, if ... [a] planner gives only limited consideration to the client's existing product, then, ordinarily, that ... planner has not complied with section 945A(1) and is precluded from giving advice.

3.3 Further, ASIC considers that statements regarding any limitation about inquiries made in respect of the existing product, or prior disclosures about limitations of any advice, do not alleviate the need to comply with section 945A(1).

3.4 In ASIC's view, if the ... planner cannot give the matter the necessary consideration to ensure the advice is appropriate, then no advice should be given at all."

## Industry fund planners

Industry Fund Financial Planning provides advice only to members or potential members of a range of industry funds. The FSG distributed by this dealer group (effective from 9 March, 2006) clearly limits the scope of the advice it offers:

*“... advice concerning the consolidation of your superannuation accounts [is] based solely upon information relating to the differences in fees and charges applying in the funds being investigated. The advice does not take any other factors into consideration.*

*Please be aware that the advice is based on limited information that may be incomplete. The advice is not based on your full personal information and does not take into account your entire particular financial needs, objectives and situation. This means that any advice may not be entirely appropriate to your overall financial situation, needs and objectives.”*

Interestingly, the same FSG also points out that there is no direct cost to members for the services detailed in the FSG, as these are met as part of the administration services provided by participating industry super funds. In other words, only participating industry funds can be recommended and these funds pay Industry Funds Financial Planning to provide such advice.

### Why don't industry fund planners have to play by the same rules?

It seems clear to me, that industry fund planners are clearly limiting their advice in direct contravention to ASIC's view of the law.

Why is ASIC applying the law unequally?

Will ASIC be imposing an enforceable undertaking on Industry Funds Financial Planning and require them to write to customers that may have been impacted, offering to review their advice? If not, why not?

Will Industry Funds Financial Planning have to disclose that 100% of its product recommendations involve industry funds that pay them to recommend such products? Will ASIC require Industry Funds Financial Planning to consider whether it appropriately manages this potential conflict of interest?

Will ASIC apply the law equally and be fair in its application of the law to all?

Will ASIC explain to hard working small businessmen like me, what their interpretation of the law is, or will I have to wait my turn for an enforceable undertaking before I find out? I would point out that in most western democracies, application of the law retrospectively is frowned upon, and for good reason.

Kind regards

Peter Brien